

REMARKS

Claims 1 to 9, and 14 to 24 are in the application. Claims 1, 7, 8, 14 and 19 have been amended. Claim 24 has been added. Support for the amendments and newly added claim lies in the specification, on page 3, lines 32; page 8, lines 32 to 42, and page 9, lines 1 to 12; or in the working examples. No new matter is believed added.

The Examiner appears to have limited the search to substituted indazoles but no basis for this appears in the restriction as provided on 17 January 2008. An election of species was made to Example 1 wherein the A ring is a 5 membered ring containing 2 nitrogens, e.g. forming as a fused ring system an indazole, versus for instance the A ring in Example 3 which is a 5 membered ring containing 1 oxygen and 1 nitrogen, e.g. forming a benzisoxazole. The language of claim 1 which covers the elected species is wherein the A ring is a fused 5-membered heteroaryl ring substituted by $-(CH_2)_q$ aryl or $-(CH_2)_q$ heteroaryl. However, the remainder of the claim is also directed to the A ring being a fused 5-membered heteroaryl ring substituted by other substituent groups.

Claim 1 is directed to a generic invention, however, the Examiner has not provided a basis that the claims encompass more than one patentably distinct species. The genus claim is apparently found to be allowable subject matter, absent the 112 rejections described herein as no prior art has been cited against the claims. Consequently, the search should be expanded not only to include the other substituent groups as claimed in Claim 1, but to include the other 5 membered fused heteroaryl rings.

Rejection under 35 USC §112

Claim 7 is rejected under 35 USC §112, 2nd paragraph as failing to set forth the subject matter which applicant(s) regard as their invention. Applicants respectfully traverse this rejection.

Applicants respectfully request the Examiner to substantiate where in the MPEP reliance is made for the statement that "Incorporation into claims by express reference to specification in this situation is not permitted, because one must refer back to the specification to determine what applicant is claiming by referring to the examples".

The claims are read in light of the specification. Examples 1 to 6 herein quite clearly define what the species being claimed is. In order to advance prosecution on the merits, however, Applicants have amended claim 7 to include the species of Example 1 to 6 herein.

Claims 1 to 9 and 14 to 23 are rejected 35 USC §112, 2nd paragraph as failing to set forth the subject matter which applicant(s) regard as their invention. Applicants also respectfully traverse this rejection.

The Examiner rejects the term "pharmaceutically acceptable derivative thereof" as rendering the claims indefinite.

The Examiner provides a definition of "derivative" which is inconsistent with the term as used in Applicants specification. As with the above rejection, the claims are read in light of the specification. This term is defined on page 8, lines 40 -42 and on page 8, lines 1 to 12. However, in order to advance prosecution on the merits, Applicants have amended claim 1 and 7 to recite "pharmaceutically acceptable salt thereof" instead.

Lastly, Claim 19 has been amended as noted by the Examiner for lack of antecedent basis.

The Examiner comments that Claim 1 is objected to use of substituent B as opposed to its known use as an element. Applicants have changed the identification of B to B1 which should remove this objection.

In view of these remarks and amendments, reconsideration and withdrawal of the rejection and objections to the claims is respectfully requested.

Should the Examiner have any questions or wish to discuss any aspect of this case, the Examiner is encouraged to call the undersigned at the number below. If any additional fees or charges are required by this paper the Commissioner is hereby authorized to charge Deposit account 19-2570 accordingly.

Respectfully submitted,



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